

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SEP 19 2007

DAVID J. MALAND, CLERK

BY

DEPUTY _____

UNITED STATES OF AMERICA

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§

§

CASE NO. 4:02CR88.3

v.

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§

SHANCEY FRANKLIN

§

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 5, 2007 to determine whether the Defendant violated his supervised release. The Defendant was represented by Robert Jarvis. The Government was represented by Heather Rattan.

On July 1, 2003, the Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to sixty (60) months imprisonment, followed by a three (3) year term of supervised release for the offense of Conspiracy to Manufacture, Distribute, Possess or Dispense Cocaine Base (Crack)/Marijuana. On March 30, 2007, the Defendant began service of his supervised term. On November 20, 2006, this case reassigned to the Honorable Richard A. Schell, United States District Judge, Eastern District of Texas.

On July 30, 2007, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (Dkt. 443). The petition asserted that Defendant violated the following conditions: (1) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two

periodic drug tests thereafter, as directed by the probation officer; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician; (3) Defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month; (4) Defendant shall participate in a program of testing and treatment for drug and alcohol abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer; and (5) Defendant shall reside in a residential re-entry center or similar facility, in a pre-release component for a period of 120 days to commence upon release from confinement and shall observe the rules of that facility.

The petition alleges that Defendant committed the following violations: (1) Defendant submitted a urine specimen on April 25, 2007, which tested positive for cocaine, and he submitted a urine specimen on May 8, 2007, which tested positive for marijuana; (2) Defendant failed to submit a written monthly report for the month of May 2007; (3) Defendant failed to submit a random urine specimen on May 1, 2007 and failed to attend drug treatment aftercare on May 22, 2007, with Keith Lang, LPC; and (4) Defendant was terminated unsuccessfully from the Volunteers of America in Hutchins, Texas, on April 11, 2007 and that, according to the discharge report, he was discharged due to submitting a positive result on the Breathalyzer of .089 for alcohol.

Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations. At the hearing, the Court recommended that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of thirteen (13) months. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Seagoville, Texas.

Additionally, the Court recommends that Defendant be ordered to pay a fine of \$2,000.00, due immediately, payable by cashier's check or money order to the United States District Court and forwarded to the United States Clerk's Office, P.O. Box 570, Tyler, Texas 75710.

Upon release from imprisonment, it is recommended that Defendant shall be placed on supervised release for a period of fifteen (15) months. Within 72 hours of release from the custody of the Bureau of Prisons, Defendant should be required to report in person to the probation office in the district to which Defendant is released. It is recommended that, while on supervised release, Defendant shall not commit another federal, state or local crime, and shall comply with the following additional conditions:

Any amount of Defendant's \$2000.00 that remains unpaid when Defendant's supervision commences should be paid on a monthly basis at a rate of at least 10% of the Defendant's gross income, to be changed during supervision, if needed, based on Defendant's changed circumstances, pursuant to 18 U.S.C. § 3572(d)(3). Additionally, Defendant should be ordered to pay at least 50% of receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money toward the unpaid fine balance within 15 days of receipt. The fine is payable by cashier's check or money order to the United States District Court and forwarded to the Fine and

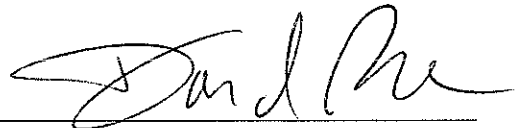
Restitution Section, U.S. Courts, P.O. Box 570, Tyler, Texas 75710. Interest should be waived.

Further, it is recommended that Defendant shall be required to provide the probation officer with access to any requested financial information for purposes of monitoring fine payments and his efforts at obtaining and maintaining lawful and gainful employment.

It is further recommended that Defendant shall be required to participate in a program of testing and treatment for drug/alcohol abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

Finally, it is recommended that Defendant be ineligible for any or all federal benefits for a period of five (5) years, effective July 1, 2003.

SIGNED this 16 day of September, 2007.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE